



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0809; FRL-9673-5]

Approval and Promulgation of Implementation Plans; Florida; Section 128 and 110(a)(2)(E)(ii) and (G) Infrastructure Requirements for the 1997 8-hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: EPA is proposing to supplement an April 18, 2012, proposed rule related to submissions provided by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on December 13, 2007, and supplemented on April 18, 2008, to demonstrate that the Florida State Implementation Plan (SIP) meets the “infrastructure” requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). First, EPA is proposing to supplement that earlier proposed action by proposing full approval of the State’s section 110(a)(2)(E)(ii) infrastructure SIP in addition to the earlier proposed conditional approval of this sub-element. Second, EPA is proposing approval of the State’s section 110(a)(2)(G) infrastructure SIP in addition to the earlier proposed federal implementation plan (FIP) for this element. In addition, EPA is proposing to approve two related draft revisions to the Florida SIP that were submitted for parallel processing by FDEP on April 19, 2012, to address the requirements of section 128 and the substantive requirements of section 110(a)(2)(G) of the CAA.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0809, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2011-0809," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2011-0089. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through

www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected.

The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to

4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

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I. What is Parallel Processing?

Parallel processing refers to a concurrent state and federal proposed rulemaking action. Generally under this process, the state submits a copy of the proposed regulation or other

revisions to EPA before conducting its public hearing. *See, e.g.,* 40 CFR part 51, Appendix V. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the Federal Register and solicits public comment during approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the federal actions in parallel.

On April 19, 2012, the State of Florida, through FDEP, submitted a request for parallel processing for draft SIP revision related to CAA section 128 and the substantive requirements of section 110(a)(2)(G). This revision was noticed for public comment by the State on April 19, 2012, but is not yet state effective. Through today's proposed rulemaking, EPA is proposing parallel approval for this draft SIP revision.

Once the April 19, 2012, revision is state-effective, Florida will need to provide EPA with a formal SIP revision request to incorporate these changes into the Florida SIP. After Florida submits the formal SIP revision request (including a response to any public comments raised during the State's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If the formal SIP revision associated with the parallel process submission is changed from what is proposed in today's action, EPA will evaluate those changes for significance. If any such changes are found by EPA to be significant, then the Agency intends to re-propose the action based upon the revised submission. In addition, if the changes render the SIP revision not approvable, EPA would re-propose the action as a disapproval of the revision.

While EPA may not be able to have a concurrent public comment process with the State, the FDEP-requested parallel processing allows EPA to begin to take action on the State's draft SIP revision in advance of the submission of the formal SIP revision. As stated above, the final

rulemaking action by EPA will occur only after the SIP revision has been: (1) adopted by Florida, (2) evaluated for changes, and (3) submitted formally to EPA for incorporation into the SIP.

II. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. *See* 62 FR 38856. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone NAAQS created uncertainty about how to proceed and many states did not provide the required “infrastructure” SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA’s failure to issue findings of failure to submit related to the “infrastructure” requirements for the 1997 8-hour ozone NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a Federal Register notice announcing EPA’s determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this

Federal Register notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state as of January 7, 2008.

On March 27, 2008, EPA published a final rulemaking entitled, “Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS,” making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. For those states that did receive findings, such as Florida, the findings of failure to submit for all or a portion of a State’s implementation plan established a 24-month deadline for EPA to promulgate a FIP to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. However, the findings of failure to submit did not impose sanctions or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements contained in the Title I part D plan for nonattainment areas as required under section 110(a)(2)(I). Additionally, the findings of failure to submit for the infrastructure submittals are not a SIP call pursuant to section 110(k)(5).

The finding that all or portions of a state’s submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Florida’s infrastructure submission was received by EPA on December 13, 2007, and was determined to be complete on March 27, 2008, for all elements with the exception of 110(a)(2)(G). In FDEP’s December 13, 2007, submission, and in a letter dated April 18, 2008, FDEP cited State statutes as evidence that Florida has the authority to implement emergency

powers for the 1997 8-hour ozone NAAQS as required by section 110(a)(2)(G). EPA, however, proposed a FIP with respect to this element of the infrastructure SIP because the statutes cited by FDEP had not been approved into the Florida SIP.¹ See 77 FR 23181 (April 18, 2012). EPA noted that the Agency would take action to approve the FIP for element 110(a)(2)(G) unless Florida submits a final SIP revision correcting the deficiency for element 110(a)(2)(G) and EPA takes final action to approve the revision prior to such time that EPA is obligated to take final action on this 1997 8-hour ozone infrastructure SIP submission, per a settlement agreement signed on November 30, 2011.

On April 19, 2012, FDEP submitted, for parallel processing, draft changes to address the deficiencies of the Florida SIP regarding the substantive requirements of section 110(a)(2)(G). Today's action proposes approval of these changes into the Florida SIP and proposes approval for element 110(a)(2)(G) of the State's infrastructure SIP submittal. If EPA is able to take final action on Florida's forthcoming final SIP revision prior to finalizing the April 18, 2012, proposed FIP, the final action to approve a FIP for 110(a)(2)(G) will no longer be necessary. If EPA is not able to take final action on the SIP revision, EPA may proceed with finalizing the FIP for element 110(a)(2)(G).

In EPA's April 18, 2012, proposed infrastructure rulemaking for Florida, the EPA also proposed to conditionally approve FDEP's December 13, 2007, infrastructure submission with regard to the 110(a)(2)(E)(ii) requirements. EPA proposed conditional approval of this sub-element because the State's implementation plan did not contain provisions to address CAA

¹ In a letter dated March 23, 2012, FDEP notified EPA of FDEP's intent to submit a SIP revision to address the SIP deficiency for 110(a)(2)(G) in the very near future. The letter Florida submitted to EPA can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2011-0809.

section 128 requirements, however, FDEP submitted a letter to EPA on March 13, 2012, that included a commitment to submit a SIP revision to address the CAA section 128 requirements. *See* 77 FR 23181. The letter Florida submitted to EPA can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2011-0809. On April 19, 2012, FDEP submitted, for parallel processing, a draft SIP revision to address the deficiencies within the Florida SIP to address CAA section 128 requirements. In today's action, EPA is proposing to approve this SIP revision into the Florida SIP and supplement the Agency's earlier proposed conditional approval of Florida's infrastructure SIP with respect to sub-element 110(a)(2)(E)(ii) with a proposed approval of this sub-element contingent upon final action to approve the section 128 provisions into the Florida SIP.

If EPA is able to take final action to approve Florida's forthcoming final SIP revision pertaining to the section 128 requirements prior to taking final rulemaking action on the April 18, 2012, proposed conditional approval and FIP, finalizing the conditional approval for 110(a)(2)(E)(ii) will no longer be necessary. If, EPA is not able to take final action the SIP revision, EPA may proceed with finalizing the conditional approval for element 110(a)(2)(E)(ii).

III. What Elements are Required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the

facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of EPA's proposed infrastructure SIP rulemaking for Florida are listed below² and in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards."

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.

² Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C). Additionally, EPA has taken action on all other infrastructure elements with the exception of 110(a)(2)(D)(i) for Florida in a separate rulemaking from today's action. Today's action is limited to infrastructure elements 110(a)(2)(E)(ii) and 110(a)(2)(G) only.

- 110(a)(2)(D): Interstate transport.³
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

As discussed above, on April 18, 2012 (77 FR 23181), EPA proposed action on Florida's December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. Today's proposed action supplements EPA's April 18, 2012, proposed rulemaking with regard to the conditional approval for section 110(a)(2)(E)(ii), and a FIP for section 110(a)(2)(G) requirements

³ EPA's April 18, 2012, proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Florida consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Florida's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 58016 (October 12, 2007). In so doing, Florida's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has recently finalized a new rule to address the interstate transport of nitrogen oxides and sulfur oxides in the eastern United States. *See* 76 FR 48208 (August 8, 2011) ("the Cross-State Air Pollution Rule"). EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

⁴ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

for Florida for the 1997 8-hour ozone NAAQS. Today's action proposes full SIP approval for both elements based upon pending changes to the Florida SIP regarding section 128 (State Boards as applicable to the State's infrastructure SIP pursuant to section 110(a)(2)(E)(ii)) and the substantive requirements of section 110(a)(2)(G) (emergency power authority comparable to that in section 303 of the CAA).

IV. What is EPA's Analysis of How Florida Addressed CAA Section 128?

Section 128 of the CAA requires that states include provisions in their SIP to address conflict interest for state boards that oversee CAA permits and enforcement orders. Specifically, CAA section 128 reads as follows:

(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that –

(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any

other entities which are more stringent than the requirements submitted as part of an implementation plan.

During the evaluation of Florida's SIP in regards to EPA's proposed rulemaking of the State's December 13, 2007, and supplemented on April 18, 2008, infrastructure submission related to section 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS, EPA noted that Florida's SIP did not include provisions to address CAA section 128 requirements. As such, EPA alerted the State to this missing component of their implementation plan and as a result, FDEP submitted a letter to EPA dated March 13, 2012, which contained the State's commitment to correct this deficiency and requested that EPA take action to conditionally approve 110(a)(2)(E)(ii) as a result of this commitment. Based upon this commitment, EPA proposed conditional approval of this sub-element in its April 18, 2012, rulemaking. *See* 77 FR 23181. On April 19, 2012, FDEP submitted a draft SIP revision for parallel processing to address the section 128 requirements. Florida's April 19, 2012, draft SIP revision, proposes to include existing state statutes to meet the applicable requirements of section 128.

For purposes of section 128(a)(1), Florida has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by an appointed Secretary. Appeals of final administrative orders and permits are available only through the judicial appellate process described at Florida Statute 120.68. As such, a "board or body" is not responsible for approving permits or enforcement orders in Florida, and the requirements of section 128(a)(1) are not applicable.

Regarding section 128(a)(2) (also made applicable to the infrastructure SIP pursuant to section 110(a)(2)(E)(ii)), Florida has submitted for incorporation into the SIP relevant provisions of Florida Statutes 112.3143(4) – *Voting Conflict* and 112.3144 – *Full and Public Disclosure of*

Financial Interests. Because Florida does not rely upon a “board or body” to approve permits or enforcement orders, the conflict of interest disclosure requirements of section 128(a)(2) only apply to the head of the State’s executive agency (i.e., FDEP) tasked with these powers. The above cited Florida Statutes are applicable to the Secretary of FDEP and EPA has preliminarily determined them to be sufficient to satisfy the applicable conflict of interest provisions of section 128.

Today, EPA is proposing to approve Florida Statutes 112.3143(4) and 112.3144 into the Florida’s SIP as meeting the requirements of section 128 of the CAA. This proposed approval is contingent upon Florida submitting a final SIP revision consistent with the April 19, 2012, draft SIP revision.

V. What is EPA’s Analysis of How Florida Addressed CAA Section 110(a)(2)(E)(ii)?

Section 110(a)(2)(E)(ii) requires that each implementation plan provide that the State comply with the requirements respecting state boards pursuant to section 128 of the Act.⁵ As a result of Florida’s April 19, 2012, draft SIP revision to address 128 requirements (discussed above), EPA is now proposing a full approval of Florida’s December 13, 2007, infrastructure submission with regard to section 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS. This proposed full approval (contingent on EPA’s final approval of Florida’s SIP revision to meet the CAA section 128 requirements) is an alternative to the conditional approval that EPA proposed

⁵ Today’s action is related specifically to the 110(a)(2)(E)(ii) sub-element of Florida’s December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. As noted earlier in this proposed rulemaking, EPA has already proposed action for the majority of Florida’s December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS, and is not re-proposing for many of those elements, including sub-elements 110(a)(2)(E)(i) and 110(a)(2)(E)(iii), in this today’s action.

for this element on April 18, 2012. *See* 77 FR 23181. If EPA is able to take final action to approve Florida's forthcoming final SIP revision pertaining to these requirements prior to taking final action on the April 18, 2012, proposed conditional approval, finalizing the conditional approval for 110(a)(2)(E)(ii) will no longer be necessary. If, EPA is not able to take final action the SIP revision, EPA may proceed with finalizing the conditional approval for element 110(a)(2)(E)(ii).

VI. What is EPA's Analysis of How Florida Addressed CAA Section 110(a)(2)(G)?

Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. On March 27, 2008, EPA published a final rulemaking entitled, "Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS," making a finding as to whether each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. Florida was among the states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for element 110(a)(2)(G) for the 1997 8-hour ozone NAAQS by March 1, 2008. The finding of failure to submit action triggered a 24-month clock for EPA to either issue a FIP or take final action on a SIP revision which corrects the deficiency for which the finding of failure to submit was received. *See* 42 U.S.C. 7410(c)(1).

In FDEP's December 13, 2007, submission and a letter dated April 18, 2008, FDEP cited State statutes as evidence that Florida has the authority to implement emergency powers for the 8-hour ozone standard. The April 18, 2008, letter FDEP sent to EPA, which included the

specific State statutes cited by FDEP, can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2011-0809. Because these statutes had not been adopted into the federally-approved SIP, in an April 18, 2012, rulemaking, EPA proposed a FIP to correct this deficiency and preliminarily determined that the cited statutes were sufficient to meet the requirements of section 303 of the CAA thus meet the requirements of element 110(a)(2)(G). *See* 77 FR 23181. In the April 18, 2012, rulemaking, EPA noted the Agency's intentions to approve a FIP for element 110(a)(2)(G) unless Florida submitted a final SIP revision correcting the deficiency for element 110(a)(2)(G) and the Agency acted on such submission prior to the finalization of the FIP.

Due to EPA's obligations pursuant to the infrastructure SIP settlement agreement described above, EPA would need to take final action to approve such a SIP revision prior to the date on which EPA is obligated to take final action on the FIP for this element. Should final approval of a SIP revision related to emergency powers (the subject of this action) occur after EPA finalizes a FIP for element 110(a)(2)(G), EPA would act to rescind the FIP at that time. If EPA is able to take final action to approve Florida's forthcoming final SIP revision pertaining to these requirements (section 110(a)(2)(G)) prior to taking final rulemaking action on the April 18, 2012 proposed FIP, finalizing the FIP for 110(a)(2)(G) will no longer be necessary.

On April 19, 2012, FDEP submitted a draft SIP revision, for parallel processing, to address the 110(a)(2)(G) requirements for the 1997 8-hour ozone NAAQS. In FDEP's proposed SIP revision, Florida Statutes 403.131 and 120.569(2)(n) were submitted for inclusion to the SIP to address the requirements of section 110(a)(2)(G) of the CAA. EPA has reviewed Florida's April 19, 2012, draft SIP revision, and has made the preliminary determination, that the draft revision is adequate for emergency powers and meets the requirements of 110(a)(2)(G) for the

1997 8-hour ozone NAAQS. Therefore, through today's action, EPA is proposing to approve this revision into the Florida SIP and is proposing approval in alternative to the Agency's April 18, 2012, proposed FIP for this infrastructure element. This proposed approval is contingent upon Florida submitting a final SIP revision consistent with the April 19, 2012, draft SIP revision.

VII. Proposed Action

As described above, EPA is proposing to approve Florida's April 19, 2012, draft SIP revision to incorporate provisions into the Florida SIP to address section 128 requirements of the CAA. As a result of EPA's proposed approval of Florida's April 19, 2012, draft SIP revision to address 128 requirements, EPA is also proposing to approve the 110(a)(2)(E)(ii) sub-element of Florida's December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approval Florida's April 19, 2012, draft SIP revision to incorporate provisions into the Florida SIP to address section 110(a)(2)(G) requirements for the 1997 8-hour ozone NAAQS. As a result of EPA's proposed approval of Florida's April 19, 2012, draft SIP revision to address the substantive requirements 110(a)(2)(G), EPA is also proposing to approve the 110(a)(2)(G) element of Florida December 13, 2007, infrastructure submission for the 1997 8-hour ozone NAAQS.

EPA's proposed approval is contingent on Florida's submission of a final SIP revision to address CAA section 128, and the substantive requirements of CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS. Should Florida not submit a final SIP revision to EPA addressing CAA section 128, and CAA section 110(a)(2)(G) requirements for the 1997 8-hour ozone NAAQS and/or EPA is not able to finalize a full approval action prior to such time that EPA is obligated to take final action on the 1997 8-hour ozone infrastructure SIP submission for Florida,

EPA will be obligated to take final action on the proposed conditional approval of section 110(a)(2)(E)(ii) and the proposed FIP for 110(a)(2)(G). The Agency has made the preliminary determination that these proposed actions are consistent with the CAA and EPA guidance related to 128 requirements and infrastructure submissions.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 7, 2012

A. Stanley Meiburg

Acting Regional Administrator,

Region 4.

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